

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

NORTHERN DIVISION

**FILED**

NOV 01 2007

*[Signature]*  
CLERK

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UNITED STATES OF AMERICA,

CR 07-10034 (01)

Plaintiff,

-vs-

ORDER AND OPINION

BRUCE MOTTI,

Defendant.

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Defendant's attorney has filed a motion for a continuance (Doc. 20). The defendant personally will not consent to any continuance and is opposed to the motion. The defendant has been previously warned (by a memo to his attorney) that he may be "shooting himself in the foot" by not cooperating with his attorney. Counsel for defendant has previously written to the court, asking that, after jury selection, the jury return during the week of November 27, that being the week previously scheduled for the trial of this case. An Order has been entered directing jury selection on November 13 with the jury to return at 1:00 p.m. on November 15. The court has previously advised counsel that the court has a full day of sentence hearings (eight) in Pierre on Monday, November 26. The last hearing that Monday does not commence until 5:30 p.m. and the court must then return to Aberdeen for a jury trial on Tuesday.

On Friday, November 30, the court has a long scheduled court trial of two juveniles to conduct. Two other juveniles in that case have already admitted guilt and the court is required to normally conduct their dispositional hearings within 20 days after the adjudicatory hearing. One of these juveniles has, as part of a plea agreement, an agreement to cooperate with the government and to testify at the trial set on November 30. The trial is a "Pierre case" that has been moved to Aberdeen to accommodate the court. That court trial cannot be further continued.

With all the foregoing, this leaves working days for trial during the week of November 26 of only November 27, 28, and 29. We have another Central Division jury case (in which the jury will also be selected on November 13) scheduled for trial in Aberdeen on Tuesday, November 27. That case involves an alleged assault with a dangerous weapon and an alleged assault resulting in serious bodily injury. Whether that case can even be tried in two days remains to be seen. Even if it could be tried in two days, this leaves only one day for a possible trial of the present case. Thus, it would be impossible to try the present case during the week of November 26.

We only have one courtroom available in Aberdeen. I only have one court reporter.

The defendant is in custody and is, of course, concerned about any further delay.

I have signed an order for subpoenas for defendant to obtain necessary records by not later than November 12. There is nothing to prohibit the defendant from deciding to enter an open plea after the normal plea agreement deadline.

The interests of justice do not require a continuance, either from the standpoint of the defendant or the standpoint of the public. If a continuance were to be granted, a continuance into late February would probably be required. In the meantime, the defendant would be in custody although he has not been convicted of anything at this time.

The motion for a continuance should be denied.

Now, therefore,

IT IS ORDERED that the motion (Doc. 20) for a continuance is denied.

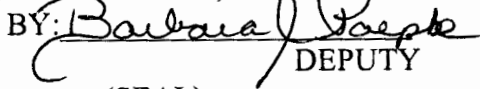
Dated this 1st day of November, 2007.

BY THE COURT:

  
CHARLES B. KORNMANN  
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY:   
DEPUTY  
(SEAL)